

REMARKS/ARGUMENTS

Claims 1-20 were rejected as anticipated by Cline et al. ('031) in the Office Action dated May 17, 2005. Claims 1-20 are pending.

Rejection of Claims 1-20:

The Examiner rejects Claims 1-20 as anticipated by Cline et al, US 5,368,031. (Cline) It is respectfully urged that this rejection is improper for at least the following reasons.

With respect to Claim 1, as previously amended, it is respectfully urged that Cline does not teach or suggest a positioning device that engages an optical fiber for moving the light-emitting section of the treatment device from one treatment segment to another. Cline discloses at Column 4 that a laser fiber 230 is inserted into the patient with a hollow needle 240 guided by a mechanical positioning device 250 such as a hydraulic positioner. Note that Cline teaches a safe trajectory from entry point to the target does not intersect critical anatomy, such as large blood vessels, and Cline goes on to explain that "More than one needle may be required to remove an irregular shaped tumor". Cline further notes that an alternative embodiment not shown "may employ a heat source that creates heat over a line segment instead of a point." (See column 4, lines 45-63) .

It is respectfully urged that Cline does not teach or suggest a positioning device that engages an optical fiber for moving the light emitting section of the treatment device from one treatment segment to another. It is respectfully urged that the device 250 of Cline is merely used to position a needle 240 at a target, and that Cline does not teach or suggest a device for moving the light emitting section of a treatment device from one tissue treatment segment to another tissue treatment segment.

The Examiner has taken the position that Claim 1 does not distinguish over the prior art because, in the Examiner's view, Claim 1 merely recites an intended use. However, it is respectfully urged that Claim 1 recites affirmatively that the positioning devices engages the optical fiber for moving the light-emitting section from one treatment segment to another. Accordingly, withdrawal of the rejection is requested.

With respect to Claim 5, it is respectfully urged that Cline does not teach an optical fiber having a temperature sensor adjacent a light-emitting section for optically measuring a temperature. Further, it is respectfully urged that the Examiner has not provided basis for the rejection, as required by the MPEP. Applicant does not have a fair opportunity to respond to the rejection without the Examiner explaining the basis for the rejection, as required by the MPEP. Accordingly, the Examiner is respectfully requested to provide the grounds for the rejection in a non-final Office Action, or withdraw the rejection.

Similarly, with respect to Claims 6-10 the Examiner is requested to provide the grounds for the rejection in a non-final Office Action, or withdraw the rejection. In particular, but without limitation, it is not seen how Cline teaches a main processor that automatically controls the movement of the light-emitting section within a treatment site and also adjusts the energy delivered from said energy generator to said light-emitting section in response to the temperature measurement, as recited in Claim 8, nor a positioning device which automatically moves an energy delivery device in response to signals received from a sensor, as recited in Claim 10.

Regarding Claim 16 as originally filed, it is respectfully urged that Cline does not anticipate the claim because, among other things and without limitation, Cline does not teach a temperature sensor at a distal end of light emitting section, the temperature sensor measuring temperature within tissue when the light emitting section is energized.

It is respectfully urged the Examiner has not provided grounds for the 102 rejection based on Cline, and that the Examiner is required to set forth how each and every element of Claim 16 is disclosed by Cline. The Examiner is respectfully requested to withdraw the rejection or provide an explanation for the rejection in a non-final Office Action.

Likewise with respect to Claims 17-20, the Examiner is respectfully requested to provide an explanation of how Cline teaches or suggests the subject matter of those claims. For instance, but without limitation, it is not seen how Cline teaches or suggests a device for positioning an optical fiber in a blood vessel as recited in Claim 20.

The Examiner is respectfully requested to call the undersigned at 513 337 3535 if the Examiner has any questions or if the Examiner would like to discuss the application.

Respectfully submitted,
/Gerry Gressel/
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